

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARBARA LEWIS-CLARK,

Plaintiff,

CASE NUMBER: 10-15063

HONORABLE VICTORIA A. ROBERTS

v.

HARPER HOSPITAL ET AL.,

Defendants.

ORDER DISMISSING PLAINTIFF'S COMPLAINT

Plaintiff filed a Complaint against Defendants on December 21, 2010, alleging medical malpractice. She says the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. Pursuant to § 1331, "[t]he district courts shall have original jurisdiction of all civil actions under the Constitution, laws, or treaties of the United States." However, Plaintiff's cause of action does not arise under federal law, the Constitution, or treaties of the United States, and her right to relief does not depend on the resolution of a substantial question of federal law. *See Thornton v. Southwest Detroit Detroit Hosp.*, 895 F.2d 1131, 1133 (6th Cir. 1990) ("Federal courts have jurisdiction under section 1331 in 'only those cases in which a well-pleaded Complaint establishes either that federal law creates the cause of action or that the plaintiff[]s right to relief necessarily depends on resolution of a substantial question of federal law.'") (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)).

Plaintiff's medical malpractice action is governed by state law. The record reveals that Plaintiff previously filed suit against Defendants in Wayne County Third

Circuit Court. That case was settled. Plaintiff filed appeals in the Michigan Court of Appeals and the Michigan Supreme Court. This Court lacks subject matter jurisdiction over Plaintiff's action and her Complaint is *sua sponte* **DISMISSED WITH PREJUDICE**. Fed. R. Civ. P. 12(b)(1); *Sturgis v. Lloyd*, No. 10-10101, 2010 WL 1052342, at *2 (E.D. Mich. Mar. 19, 2010) ("Encompassed in the duty to assess subject matter jurisdiction is the requirement to dismiss sua sponte an action over which a court lacks jurisdiction.").

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: January 10, 2011

The undersigned certifies that a copy of this document was served on the attorneys of record and Barbara Lewis-Clark by electronic means or U.S. Mail on January 10, 2011.

s/Carol A. Pinegar
Deputy Clerk